



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/584,872

05/11/2009

Martin Kurth

16-981P/US

3946

26294

7590

06/06/2011

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVELAND, OH 44114

EXAMINER

BRESLIN, DANIEL J

ART UNIT

PAPER NUMBER

3632

MAIL DATE

DELIVERY MODE

06/06/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/584,872	KURTH, MARTIN	
	Examiner	Art Unit	
	DANIEL J. BRESLIN	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/02/2009 and 03/30/2010</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the last line of claim 1, “spaced at different distances from the bottom wall” is held to be indefinite. The cover element 16 rotates at border hinge 15, which means that the cover element 16 can be spaced at different distances from the bottom wall 2, depending on the location of the cover element. Since the cover element is movable with respect to the bottom wall 2, then the center hinges are movable as well. Therefore it would be indefinite to say the center hinges are space at different distances from the bottom wall because distances between these two elements are changing depending on the location of the cover element.

Regarding claim 2, the language, “adjacent cover sections are inhibited in a locked position” is held to be indefinite. The word “inhibited” would ordinarily take on the definition “to prevent or restrain.” However, these ordinary definitions would render different interpretation of the claim. As best understood by the examiner, the applicant does not want to interpret the claim in the first sense, “to prevent” since the cover

Art Unit: 3632

sections are not "prevented" in a locked position. Instead it would be recommended that the applicant used the term "restrained" or "held" in a locked position.

Regarding claim 3, the last two lines of the claim are held to be indefinite. It is not clear what applicant is intending to claim or what is mean by the language itself, "one locked position each, are arranged with their faces that point towards each other lying against each other." It is recommended that the applicant change this language to better define what he/she would like to claim. The examiner is unable to deduct any interpretation from this language for the purposes of the first (non-final) office action.

Regarding claim 5, the phrases "the front border area" and "the bottom-wall side border area" are held to be indefinite. It is unclear what these phrases are referring to and what they encompass since they have not been defined previously in the claims. For the purposes of examination, the examiner will interpret these to mean the area around the closure parts.

Regarding claims 6 and 7, the language "preferably a right angle" is held to be indefinite. It is unclear whether the applicant is intending any angle or specifically a right angle. For the purposes of examination, the examiner will interpret the language to mean any angle.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3632

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBartolo, Jr. et al (US 6084180) in view of Matsumi (US 4609171).

Regarding claim 1, DeBartolo discloses a device for receiving elongated objects, comprising a bottom wall (70) and a receiving element having two bordering walls (72 and 74) facing each other, and a cover element (12) that is mounted on the receiving element so as to be pivoted by means of a border hinge (32 and 78) and that can be linked with the receiving element by means of a closure system (100) facing the border hinge but lacks whereby the cover element has at least three cover sections and whereby the closure system allows for a number of closure positions, corresponding to the number of center hinges, in which the cover sections are spaced at different distances from the bottom wall.

However, Matsumi teaches whereby the cover element has at least three cover sections (the tip of the three arrows, see figure below) and whereby the closure system allows for a number of closure positions, corresponding to the number of center hinges (18 and Col. 5, lines 40-49), in which the cover sections are spaced at different

distances from the bottom wall (the figure below shows how each of the arrows are a different distance from the bottom wall).

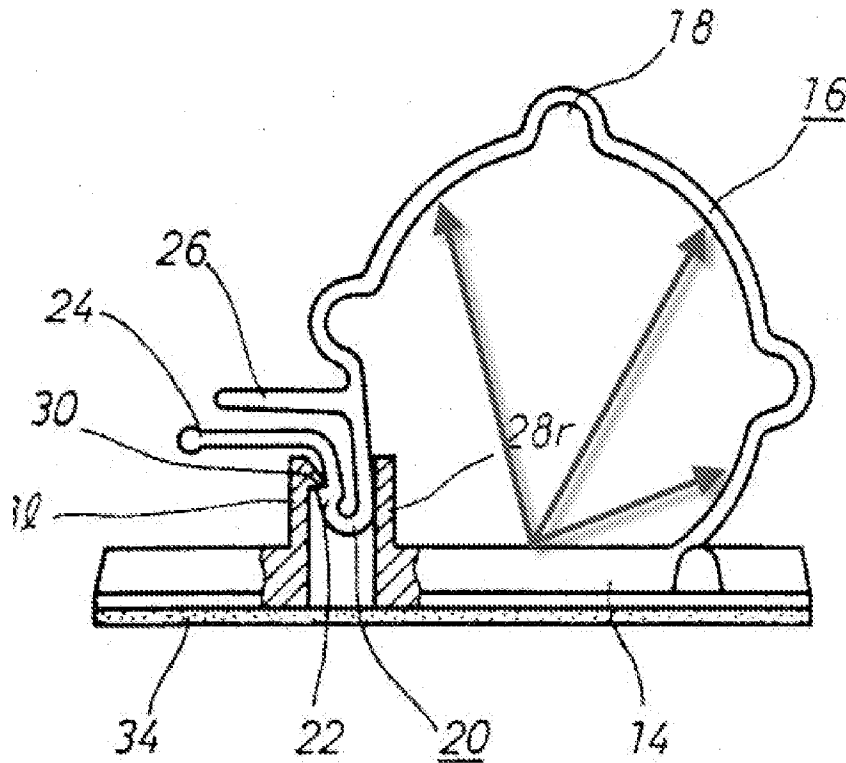


Fig. 7

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device for receiving elongated objects of DeBartolo with the three cover sections as taught by Matsumi in order to provide a tighter fit around the object(s) that are being clamped (Col. 5, lines 40-49).

Regarding claim 2, DeBartolo discloses whereby present on the cover sections is an inhibiting system (the longitudinal ribs that run parallel and adjacent to 36) but lacks

Art Unit: 3632

wherein two adjacent cover sections are inhibited in a locked position in their movement relative to one another.

However, Matsumi teaches wherein two adjacent cover sections are inhibited in a locked position in their movement relative to one another (When the lock in Fig. 4 is snapped, the three section stay in the same place relative to one another.)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device for receiving elongated objects of DeBartolo with the three cover sections as taught by Matsumi in order to provide a tighter fit around the object(s) that are being clamped (See Fig. 3 and Col. 5, lines 40-49).

Regarding claim 3, DeBartolo discloses whereby the inhibiting system has a number of ribs (the longitudinal ribs that run parallel and adjacent to 36) that are arranged in the cover sections (the examiner is unable to interpret this limitation(s): and one locked position each, are arranged with their faces that point towards each other lying against each other).

Regarding claims 4 and 6-7, DeBartolo discloses whereby formed onto the cover section that lies furthest from the border hinge, is a side border section (34 and 74) that is aligned at an angle, preferably a right angle, to this cover section, on which are configured closure parts (64 and 102) of the closure system that interact with closure counterparts of the closure system that are configured on a bordering wall.

Regarding claim 5, DeBartolo discloses whereby the closure counterparts are configured in the front border area and in the bottom-wall side border area of the mentioned bordering wall (See Fig. 2 and 7).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL J. BRESLIN whose telephone number is (571)270-3019. The examiner can normally be reached on Monday - Friday, 8:00 - 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell McKinnon can be reached on (571) 272-4797. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/584,872
Art Unit: 3632

Page 8

/D. J. B./
Examiner, Art Unit 3632

/TERRELL MCKINNON/
Supervisory Patent Examiner, Art Unit 3632